

REMARKS

The application has been amended to place it in condition for allowance at the time of the next Official Action.

Claim status

Claims 1 and 3-8 are pending for consideration.

Claim objection

Claim 3 is amended to depend from claim 1 to address the claim objection.

35 USC 112, second rejection

Claim 5 is amended to change "a respective first end" to "a respective said first end" to clarify that this term refers back to the first recitation of "first end". Such a change is believed to address the 35 USC 112, second paragraph rejection of claim 5 and withdrawal of the same is respectfully requested.

35 USC 103(a) rejection

Claims 1 and 3-8 were rejected under 35 USC 103(a) as being unpatentable over NERRINCK et al. US 5,224,281. That rejection is respectfully traversed.

NERRINCK, as noted in the Official Action, discloses an articulation (7, 8) connecting a body (1) and an upper (3). However, the articulation - axis (7, 8) is configured to rotate

the cover (5) in an open or closed position (see column 3, line 46 to 61).

By contrast, in the present invention, with reference to Figure 1, for example, the pivot (24) allows the rotation of the upper (4) relative to the body (2) to allow a flexion of the foot of the user.

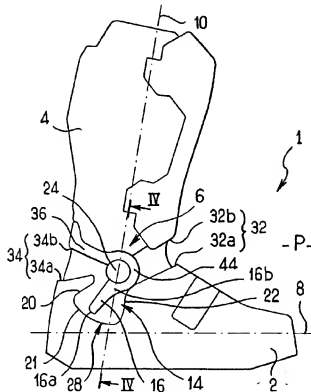


FIG. 1

Indeed, in NERRINCK, it is described that the upper (3) can bend forward from the stopping position of the stirrup (9) on the supporting element (13) (see column 3 line 62 to column 4 line 2). Thus, in NERRINCK the stirrup (9) remains in a fixed position during the flexion of the upper. The axis (7) and (8)

don't move during this flexion. The deflection is thus not made using the axis (7) and (8) contrary to the assertions set forth in the Official Action.

Thus, even if one were to optimize the angles as suggested in the Official Action, the invention of claim 1 does not result.

By way of further explanation, claim 1 includes at least the following inventive step that defines over NERRINCK.

The objective technical problem solved regarding NERRINCK is to free flexion of the ankle of a user of the footwear, in normal use, while providing comfort and effective protection against the risk of injury.

One of ordinary skill in the art faced with this problem and having NERRINCK before her/him would not be able to solve this problem because NERRINCK provides no evidence suggesting the articulations all stem from the body, limiting said rotation of the shaft in a normal range of rotation and an extreme range of rotation.

NERRINCK only envisages linking the back end of a rod to facilitate the introduction and extraction of the user's foot in the footwear. The resources used in NERRINCK for bending the upper relative to the body do not depend on the axis of articulation of NERRINCK. Rather, this bending is limited on the bottom through the support element but not limited to the rear, thereby creating for the user the risk of injury to the ankle,

especially when using a shoe according to NERRINCK for an activity such as motorcycling.

In view of this, the combination of NERRINCK with the general knowledge of one of ordinary skill in the art, does not suggest the claimed invention, because the problem which underlies the present invention is not acknowledged by such combination.

Therefore, the invention of claim 1 does not result in any obvious way based on NERRINCK.

Independent claims 5 and 8 include features similar to those of claim 1 and the analysis above regarding claim 1 as it applies to these features also apply to claims 5 and 8.

The dependent claims are believed to be patentable at least for depending from an allowable independent claim.

In view of the present amendment and the foregoing remarks, it is believed that the present application has been placed in condition for allowance. Reconsideration and allowance are respectfully requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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